Supreme Court, U.S.
FILED

03 384 AUG 27 2003

No.

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Richard J. Heller

Petitioner(s)

v.

U.S. Railroad Retirement Board

Respondent(s)

On Petition For Writ Of Certiorari

The United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Richard J. Heller
P.O. Box 2638
Binghamton, NY 13902
Phone (607) 863-4397
Petitioner (Pro Se)

23 pp

QUESTIONS PRESENTED

United States Court of Appeals errored in its decision thus, violated the United States laws and violated petitioners Constitutional rights;

AMENDMENTS

I and V and VIII and XIV

Due Process of Law denied, etc.

and

Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), ("ADEA"), ("EPA") and ("ADA") employment discrimination and retaliation.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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APPENDIX B Decision of (USCA for Panel Rehearing
APPENDIX C Decision of RRRB
APPENDIX D Decision of Petitioners employer (Conrail) ordering Petitioner to file a disability annuity directly with the RRRB

TABLE OF AUTHORITIES CITED

CASES

Akins v. United States Railroad Retirement Board,
721 F.2d 652 (9th Cir. 1983)

Andrews v. Railroad Retirement Board,
595 F.2d 676 (DC Dir. 1978)

Aspros v. United States Railroad Retirement Board,
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948 F.2d 123 (2nd Cir. 1991)

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905 F.2d 659 (2nd Cir. 1990)

Simmons v. Railroad Retirement Board,
982 F.2d 49 (2nd Cir. 1992)

Spraic v. United States Railroad Retirement Board,
735 F.2d 1208 (9th Cir. 1984)

Williams v. Railroad Retirement Board,
585 F.2d 341 (8th Cir. 1978

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

- The opinion of the United States Court of Appeals appears at Appendix A & B to the petition and is unpublished.
- Order of RRRB appears at Appendix C.
- Order of (Conrail) appears at Appendix D.

JURISDICTION

The date on which the United States Court of Appeals decided my case was April 21, 2003. Copy appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 6. 2003, and a copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendments -

  I and V and VIII and XIV Section 1.

- Title VII of the Civil Rights Act of 1964 as amended ("Title VII"), ("ADEA"), ("EPA") and ("ADA")

STATUTES

- Railroad Retirement Act (45 U.S.C. §231, et seq.)

  Section 2(a)(1); 45 U.S.C. §231a(a)(1)

  Section 7; 45 U.S.C. §231f

  Section 8; 45 U.S.C. §231g

  Section 9; 45 U.S.C. §231h

- Railroad unemployment insurance act of 1974, as amended, 45 U.S.C. §355(f) the Railway Labor Act 45 U.S.C. §151 et seq and effective January 1, 2002 Public Law 107-90 §103(a)(I)

STATEMENT OF THE CASE

Basis for Federal Jurisdiction in (USCA) -

- The Railroad Retirement Act of 1974, as amended, (45 U.S.C. §231 et seq)
- The Railroad Unemployment Insurance Act of 1974, as amended, (45 U.S.C. §355(f) the Railway Labor Act (45 U.S.C. §151 et seq)

- USCA errored in its decision by overlooking the following:

1. Substantial irrefutable documentary evidence, facts and claims in the record and in petitioners brief and reply brief.

2. Criminal crimes, assault and battery, torture treatments, terroristic threats, conspiracy, fraud and corruption, perjury, civil rights violations, employment discrimination-disability and retaliation, further fraud and corruption, evidence tampering, being an accessory, an additional trauma to petitioners spinal cord, post traumatic stress syndrome and duress, committed by the Railroad Retirement Board and all parties.

STATEMENT OF THE CASE

3. Petitioner is an employee conductor and trainman of Conrail-NS-CSX and member of the U.T.U., protected under the Railroad Retirement Act and the Railway Labor Act and (FELA) and Social Security Act and Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act ("ADA"), ("EPA") and ("ADEA"), being illegally withheld from his job, trial work period and to even perform (work) only (one) days service in a month and from filing and receiving his employee RRR Disability Annuity.

Therefore, Petitioner has (33) years of continuous active duty-service and seniority rights and with over (415) continuous months of creditable railroad service, petitioner is (entitled) to an Employee Railroad Retirement Physical Disability Annuity under the RRR Act, retroactive from 7-19-1976, his Employee (on-the-job injury) caused by Conrail.

4. The Merits of this Case.

STATEMENT OF THE CASE

ERROR OF AUTHORITIES CITED

5. See: Poole v. RRRB, 905 F.2d 659 (2nd Cir. 1990); Harris v. RRRB, 948 F.2d 123, (2nd Cir. 1991); Simmons v. RRRB 982 F.2d 49, (2nd Cir. 1992):

A decision of the RRRB is not to be set aside on judicial reviews if it is supported by substantial evidence in the record and is not based on an error of law:

Substantial evidence uncovered in the record thus exposing RRRB and all parties of their entire fraudulent scheme, criminal crimes, evidence tampering, etc., shows a systematic mocking of the Administrative and Judicial Systems - the Laws!

Obstruction of Justice!

STATEMENT OF THE CASE

ERROR OF STATUTES

6.

- Railroad Retirement Act of 1974, as amended, 45 U.S.C. §231 et seq

45 U.S.C. §231a(a)(i)

(Ten years of service)

- Effective January 1, 2002, Public Law 107-90-103(a)(i) amended the minimum eligibility requirement of ten years of creditable railroad service to five years accruing after December 31, 1995 for certain individuals

(Five years of service)

- Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act ("ADA"), ("EPA"), and ("ADEA").

STATEMENT OF THE CASE

ERROR OF STATUTES

• Railroad Unemployment Insurance Act 1974, 45 U.S.C. §355(f) the Railway Labor Act 45 U.S.C. 151 et seq, -

Thereby specifically provides that: (USCA) shall have the power to enter a decree affirming, modifying, or reversing the decision of the board, with or without remanding the cause for rehearing, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive.

This case (Heller v. RRRB) is outright fraud and corruption, evidence tampering, errors of law, perjury, defrauding petitioner and a federal judgement, criminal crimes, etc.

RRRB and all parties formed against petitioner a conspiracy, a fraudulent scheme to swindle, defrauding and depriving petitioner out of his job and his Employee Railroad Retirement Physical Disability Annuity under the Railroad Retirement Act, from 7-19-1976 to this present time.

REASONS FOR GRANTING THE PETITION

All parties in the (USCA) recognizing total liability failed to plead or otherwise defend as provided and in accordance with the rules of civil practice and procedure;

Therefore, this case (Heller v. RRRB) the U.S. Laws and relief sought remain undisputed. See order of petitioners employer (Conrail) ordering petitioner to file a disability annuity directly with the RRRB. Appearing at Appendix D.

Therefore, (USCA) and RRRB violated the United States Laws and violated petitioners Constitutional Rights;

AMENDMENTS

I and V and VIII and XIV

Due Process of Law, etc.

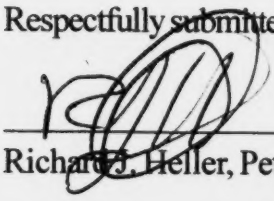
and

Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), ("ADEA"), ("EPA") and ("ADA") employment discrimination and retaliation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted



Richard J. Heller, Petitioner (Pro Se)

Date: 8-29-03

APPENDIX

RRB A-144-38-4897

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS A PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CAS, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of April, two thousand and three.

PRESENT: HON. AMALYA L. KEARSE,
HON. DENNIS JACOBS,
HON. JOSE A. CABRANES,
Circuit Judges

UNITED STATES COURT OF APPEALS
FILED
APRIL 21 2003
Roseann B. MacKechnie,
CLERK
SECOND CIRCUIT

- X

RICHARD J. HELLER,

Petitioner,

v.

RAILROAD RETIREMENT BOARD,

Respondent.

- X

APPEARING FOR PETITIONER: RICHARD J. HELLER, pro se, Binghamton, NY.

APPENDIX - A

ON SUBMISSION FOR RESPONDENT:

Steven A. Bartholow, General Counsel, Railroad Retirement Board, (Stanley Jay Shuman, General Attorney, Railroad Retirement Board, of counsel), Chicago, IL.

Petition for Review of a final decision of the Railroad Retirement Board.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition be, and it hereby is, DENIED.

Richard J. Heller petitions this Court to review a final decision of the Railroad Retirement board ("RRB"), denying him an annuity under the Railroad Retirement Act of 1974, as amended, 45 U.S.C. §231 et seq. (the "Act"). Under the Act, certain individuals are entitled to an annuity, inter alia, "if they shall have completed ten years of service." 45 U.S.C. §231a(a) (1). The RRB denied Heller an annuity because he was credited with 91 months of railroad service. Heller does not contest that he lacked the 120 months required.

A final order of the RRB is reviewable in this Court pursuant to 45 U.S.C. § 231g, but will only be set aside if it is supported by substantial evidence or based on an error of law. See, e.g., Poole v. RRB, 905 F.2d 654, 661 (2d Cir. 1990).

Substantial evidence supports the finding that Heller lacked 120 months' employment service; and no error of law undermines the RRB'S order. Heller's primary argument on this appeal is that Conrail, his previous employer, illegally refused to return him to his job after he injured his spinal cord in a 1976 Conrail switch, and thus prevented him from accruing the necessary service credits. Irrespective of the merits of Heller's quarrel with Conrail or with others, the Act allows no

exception for persons in Heller's situation. [1]

For the foregoing reasons, Heller's Petition for Review is hereby DENIED.

FOR THE COURT:
Roseann B. MacKechnie, Clerk of
Court

BY: s/_____

---

[1] At oral argument, Heller moved for reconsideration of this Court's March 11, 2003 denial of his motion to file an untimely reply brief. The motion for reconsideration is granted, as is the motion to file an untimely reply brief.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 6th day of June two thousand three.

Present:

Hon. Amalya L. Kearse
Hon. Dennis Jacobs
Hon. Jose A. Cabranes
CIRCUIT JUDGES,

UNITED STATES
COURT OF APPEALS
FILED
JUN 6 2003
Roseann B. MacKechnie,
CLERK
SECOND CIRCUIT

Heller
v
RRRB

Docket No. 02-4020

A petition for panel rehearing having been filed herein by Richard J. Heller

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk
By: s/_____
Arthur M. Heller,
Administrative Attorney

JUN -6 2003

pethrg_frm

APPENDIX - B

RAILROAD RETIREMENT BOARD

Appeal of
Richard J. Heller Claims Appeal Docket No. 01-AP-0019
R.R.B. No. A-144-38-4897
MAR 30 2001

The Board has reviewed the record in the appeal of Mr. Richard J. Heller from the decision of the hearings officer and has considered the argument and evidence contained therein. Mr. Heller appeals the decision of the hearings officer that he is not entitled to an annuity under the Railroad Retirement Act because he lacks the minimum 120 months of creditable railroad service required to be eligible for an annuity under the Act. The Board affirms and adopts the decision of the hearings officer dated February 5, 2001 with the following addition and corrections.

Mr. Heller filed an application for a disability annuity under the Railroad Retirement Act. In a letter dated August 15, 2000, the Director of Operations denied this application because, according to the records of the Board, Mr. Heller had less than the minimum 120 months of railroad service required to qualify for an annuity under the Railroad Retirement Act. In a letter dated September 20, 2000, this initial decision was affirmed on reconsideration.

In a decision dated February 5, 2001, the hearings officer affirmed the initial decision. In his appeal to the Board, Mr. Heller reiterates the arguments that he made to the hearings officer. In that appeal, Mr. Heller contended that his former railroad employer has through discrimination, fraud, and corruption held Mr. heller out of service since his on the job injury in July 1976. The decision of the hearings officer fully and completely addresses these issues.

In his appeal to the Board, Mr. Heller also contends that he is entitled to a hearing on his appeal. However, in accord with section 260.5(g) of the Board's regulations (20 CFR 260.5(g)), where there is no issue of material fact, no oral hearing is required in this case.

In his decision, the hearings officer states that Mr. Heller's last month of railroad service was March 1997. This is incorrect; the correct last month of service is March 1977. This was a typographical error and has no bearing on the outcome of this appeal.

For the reasons stated above decision the Board affirms and adopts the decision of the hearings officer.

The appeal is dismissed.

s/_____
Cherry T. Thomas

s/_____
V.M. Speakman, Jr.

s/_____
Jerome F. Kever

CONRAIL

May 19, 2000

Richard J. Heller
P.O. Box 5222
Phillipsburg, NJ 08865

Dear Mr. Heller:

This is in response to your letter requesting to be placed on a Railroad Retirement Disability Annuity.

Please be advised that a disability annuity must be applied for and granted by the Railroad Retirement Board, not by the employing railroad. Therefore, your application for a disability annuity must be made directly to the U.S. Railroad Retirement Board.

Yours Truly,

s/_____
Joann D. Jordan
Manager Human Resources

CONSOLIDATED RAIL CORPORATION 2001 MARKET STREET
P.O. BOX 41418 PHILADELPHIA, PA 19101-1418

APPENDIX - D

No. 03-384

Supreme Court, U.S.
FILED
NOV 5 - 2003
OFFICE OF THE CLERK

In The
Supreme Court of the United States

Richard J. Heller

Petitioner(s)

v.

U.S. Railroad Retirement Board

Respondent(s)

On Petition For Writ Of Certiorari
The United States Court of Appeals for the Second Circuit

PETITION FOR REHEARING FOR WRIT OF CERTIORARI

Richard J. Heller
P.O. Box 2638
Binghamton, NY 13902
Phone (607) 863-4397
Petitioner (Pro Se)

No. 03-384

In The
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Richard J. Heller
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U.S. Railroad Retirement Board
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On Petition For Writ Of Certiorari
The United States Court of Appeals for the Second Circuit

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Phone (607) 863-4397
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QUESTIONS PRESENTED

United States Court of Appeals errored in its decision thus, violated the United States laws and violated petitioners Constitutional rights:

AMENDMENTS

I and V and VIII and XIV
Due Process of Law denied, etc.
and
Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), ("ADEA"), ("EPA") and ("ADA") employment discrimination and retaliation.

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APPENDIX D Decision of Petitioners employer (Conrail) ordering Petitioner to file a disability annuity directly with the RRRB
APPENDIX E Decision of Supreme Court of the U.S. (Order)
APPENDIX F Certification of Counsel

TABLE OF AUTHORITIES CITED
CASES

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Williams v. Railroad Retirement Board,
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IN THE
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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

- The opinion of the United States Court of Appeals appears at Appendix A & B to the petition and is unpublished.
- Order of RRRB appears at Appendix C.
- Order of (Conrail) appears at Appendix D.
- Order of U.S. Supreme Court appears at Appendix E.

JURISDICTION

The date on which the United States Court of Appeals decided my case was April 21, 2003. Copy appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 6, 2003, and a copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendments –
  I and V and VIII and XIV Section 1.

- Title VII of the Civil Rights Act of 1964 as amended ("Title VII"), ("ADEA"), ("EPA") and ("ADA")

STATUTES

- Railroad Retirement Act (45 U.S.C. §231, et seq.)
  Section 2(a)(1); 45 U.S.C. §231a(a)(1)
  Section 7; 45 U.S.C. §231f
  Section 8; 45 U.S.C. §231g
  Section 9; 45 U.S.C. §231h

- Railroad unemployment insurance act of 1974, as amended, 45 U.S.C. §355(f) the Railway Labor Act 45 U.S.C. §151 et seq and effective January 1, 2002 Public Law 107-90 §103(a)(I)

STATEMENT OF THE CASE

Basic for Federal Jurisdiction in (USCA) –

- The Railroad Retirement Act of 1974, as amended, (45 U.S.C. §231 et seq)
- The Railroad Unemployment Insurance Act of 1974, as amended, (45 U.S.C. §355(f) the Railway Labor Act (45 U.S.C. §151 et seq)

- USCA errored in its decision by overlooking the following:

1. Substantial irrefutable documentary evidence, facts and claims in the record and in petitioners brief and reply brief.

2. Criminal crimes, assault and battery, torture treatments, terroristic threats, conspiracy, fraud and corruption, perjury, civil rights violations, employment discrimination-disability and retaliation, further fraud and corruption, evidence tampering, being an accessory, an additional trauma to petitioners spinal cord, post traumatic stress syndrome and duress, committed by the Railroad Retirement Board and all parties.

STATEMENT OF THE CASE

3. Petitioner is an employee conductor and trainman of Conrail-NS-CSX and member of the U.T.U., protected under the Railroad Retirement Act and the Railway Labor Act and (FELA) and Social Security Act and Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act ("ADA"), ("EPA") and ("ADEA"), being illegally withheld from his job, trial work period and to even perform (work) only (one) days service in a month and from filing and receiving his employee RRR Disability Annuity.

Therefore, Petitioner has (33) years of continuous active duty-service and seniority rights and with over (415) continuous months of creditable railroad service, petitioner is (entitled) to an Employee Railroad Retirement Physical Disability Annuity under the RRR Act, retroactive from 7-19-1976, his Employee (on-the-job injury) caused by Conrail.

4. The Merits of this Case.

ERROR OF AUTHORITIES CITED

5. See: Poole v. RRRB, 905 F.2d 659 (2nd Cir. 1990); Harris v. RRRB, 948 F.2d 123, (2nd Cir. 1991); Simmons v. RRRB 982 F.2d 49, (2nd Cir. 1992):

A decision of the RRRB is not to be set aside on judicial reviews if it is supported by substantial evidence in the record and is not based on an error of law:

Substantial evidence uncovered in the record thus exposing RRRB and all parties of their entire fraudulent scheme, criminal crimes, evidence tampering, etc., shows a systematic mocking of the Administrative and Judicial Systems – the Laws!

Obstruction of Justice!

STATEMENT OF THE CASE

ERROR OF STATUTES

6.

- Railroad Retirement Act of 1974, as amended, 45 U.S.C. §231 et seq 45 U.S.C. §231a(a)(i)

(Ten years of service)

- Effective January 1, 2002, Public Law 107-90-103(a)(i) amended the minimum eligibility requirement of ten years of creditable railroad service to five years accruing after December 31, 1995 for certain individuals

(Five years of service)

- Title VII of the C vil Rights Act of 1964, Americans with Disabilities Act ("ADA"), ("EPA"), and ("ADEA").

- Railroad Unemployment Insurance Act 1974, 45 U.S.C. §355(f) the Railway Labor Act 45 U.S.C. 151 et seq. –

Thereby specifically provides that: (USCA) shall have the power to enter a decree affirming, modifying, or reversing the decision of the board, with or without remanding the cause for rehearing, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive.

This case (Heller v. RRRB) is outright fraud and corruption, evidence tampering, errors of law, perjury, defrauding petitioner and a federal judgment, criminal crimes, etc.

RRRB and all parties formed against petitioner a conspiracy, a fraudulent scheme to swindle, defrauding and depriving petitioner out of his job and his Employee Railroad Retirment Physical Disability Annuity under the Railroad Retirement Act, from 7-19-1976 to this present time.

REASONS FOR GRANTING THE PETITION

All parties in the (USCA) recognizing total liability failed to plead or otherwise defend as provided and in accordance with the rules of civil practice and procedure;

Therefore, this case (Heller v. RRRB) the U.S. Laws and relief sought remain undisputed. See order of petitioners employer (Conrail) ordering petitioner to file a disability annuity directly with the RRRB. Appearing at Appendix D.

Therefore, (USCA) and RRRB violated the United-States Laws and violated petitioners Constitutional Rights;

AMENDMENTS

I and V and VIII and XIV

Due Process of Law, etc.

and

Title VII of the Civil Rights Act of 1964, as amended, ("TitleVII"), ("ADEA"), ("EPA") and ("ADA") employment discrimination and retaliation.

Other, substantial grounds not previously presented: Under Supreme Court Rule 44. Rehearing

1. (RRRB) Respondent recognizing total liability failed to plead or otherwise defend as provided and in accordance with the rules of civil practice and procedure;

2. This case is of General Public Importance.

REASONS FOR GRANTING THE PETITON

3. The Constitutional Guarantee

Equal protection clause. That provision in 14th Amendment of U.S. Constitution which prohibits a State from denying to any person within its jurisdiction the equal protection of the laws. "Equal protection" clause of Federal Constitution requires that persons under like circumstances be given equal protection in the enjoyment of personal rights and the prevention and redress of wrongs. In re Adoption of Richardson, 251 C.A.2d 222, 59 Cal. Rptr. 323, 334.
See also **Equal protection of the law.**

Equal protection of the law. The constitutional guarantee of "equal protection of the laws" means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness. People v. Jacobs, 27 Cal. App. 3d 246, 103 Cal. Rptr. 536, 543; 14th Amend., U.S. Const.

REASONS FOR GRANTING THE PETITION

4.

Justa causa / jeste koza / . In the civil law, a just cause; a lawful ground; a legal transaction of some kind.

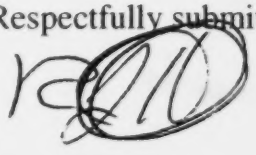
Just cause. A cause outside legal cause, which must be based on reasonable gounds, and there must be a fair and honest cause or reason, regulated by good faith. Dubois v. Gentry, 182 Tenn. 103, 184 S.W.2d 369, 371. Fair, adequate, reasonable cause. In re Municipal Garage in and for City of Utica, 141 Misc. 15, 252 N.Y.S. 18, 32. Legitimate cause; legal or lawful ground for action; such reasons as will suffice in law to justify the action taken. Boston Elevated Ry. Co. v. Commonwealth, 310 Mass. 528, 39 N.E.2d 87, 112, 124. See **Cause of action.**

Under provision that no license shall be revoked without "just cause," the words imply that charges should be made and notice of hearing given and an opportunity to be heard afforded. Carroll v. California Horse Racing Board, 16 Cal.2d 164, 105 P.2d 110, 111.

CONCLUSION

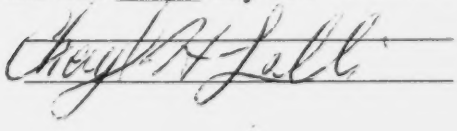
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Richard J. Heller
Petitioner (Pro Se)

Sworn to and
subscribed before
me this 5th day of November, 2003



CHERYL H. LALLI
Notary Public, State of New York
No. 01LA6094842
Qualified in Broome County
My commission expires 6/30/07

APPENDIX

RRB A-144-38-4897

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS A PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CAS, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of April, two thousand and three.

PRESENT: HON. AMALYA L. KEARSE,
HON. DENNIS JACOBS,
HON. JOSE A. CABRANES,
Circuit Judges

UNITED STATES
COURT OF APPEALS
FILED
APRIL 21 2003
Roseann B. MacKechnie,
CLERK
SECOND CIRCUIT

- X

RICHARD J. HELLER,

Petitioner,

v.

RAILROAD RETIREMENT BOARD,

Respondent.

- X

APPEARING FOR PETITIONER: RICHARD J. HELLER, pro se,
Binghamton, NY.

APPENDIX - A

ON SUBMISSION FOR RESPONDENT:

Steven A. Bartholow, General Counsel, Railroad Retirement Board, (Stanley Jay Shuman, General Attorney, Railroad Retirement Board, of counsel), Chicago, IL.

Petition for Review of a final decision of the Railroad Retirement Board.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition be, and it hereby is, DENIED.

Richard J. Heller petitions this Court to review a final decision of the Railroad Retirement board ("RRB"), denying him an annuity under the Railroad Retirement Act of 1974, as amended, 45 U.S.C. §231 et seq. (the "Act"). Under the Act, certain individuals are entitled to an annuity, inter alia, "if they shall have completed ten years of service." 45 U.S.C. §231a(a)(1). The RRB denied Heller an annuity because he was credited with 91 months of railroad service. Heller does not contest that he lacked the 120 months required.

A final order of the RRB is reviewable in this Court pursuant to 45 U.S.C. § 231g, but will only be set aside if it is supported by substantial evidence or based on an error of law. See, e.g., Poole v. RRB, 905 F.2d 654, 661 (2d Cir. 1990).

Substantial evidence supports the finding that Heller lacked 120 months' employment service; and no error of law undermines the RRB'S order. Heller's primary argument on this appeal is that Conrail, his previous employer, illegally refused to return him to his job after he injured his spinal cord in a 1976 Conrail switch, and thus prevented him from accruing the necessary service credits. Irrespective of the merits of Heller's quarrel with Conrail or with others, the Act allows no

exception for persons in Heller's situation.[1]

For the foregoing reasons, Heller's Petition for Review is hereby DENIED.

FOR THE COURT:
Roseann B. MacKechnie, Clerk of
Court

BY: s/_____

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[1] At oral argument, Heller moved for reconsideration of this Court's March 11, 2003 denial of his motion to file an untimely reply brief. The motion for reconsideration is granted, as is the motion to file an untimely reply brief.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 6th day of June two thousand three.

Present:

Hon. Amalya L. Kearse
Hon. Dennis Jacobs
Hon. Jose A. Cabranes
CIRCUIT JUDGES,

UNITED STATES
COURT OF APPEALS
FILED
JUN 6 2003
Roseann B. MacKechnie,
CLERK
SECOND CIRCUIT

Heller
v
RRRB

Docket No. 02-4020

A petition for panel rehearing having been filed herein by Richard J. Heller

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk
By: s/_____
Arthur M. Heller,
Administrative Attorney

JUN -6 2003

pethrg_frm

APPENDIX - B

RAILROAD RETIREMENT BOARD

Appeal of
Richard J. Heller Claims Appeal Docket No. 01-AP-0019
R.R.B. No. A-144-38-4897
MAR 30 2001

The Board has reviewed the record in the appeal of Mr. Richard J. Heller from the decision of the hearings officer and has considered the argument and evidence contained therein. Mr. Heller appeals the decision of the hearings officer that he is not entitled to an annuity under the Railroad Retirement Act because he lacks the minimum 120 months of creditable railroad service required to be eligible for an annuity under the Act. The Board affirms and adopts the decision of the hearings officer dated February 5, 2001 with the following addition and corrections.

Mr. Heller filed an application for a disability annuity under the Railroad Retirement Act. In a letter dated August 15, 2000, the Director of Operations denied this application because, according to the records of the Board, Mr. Heller had less than the minimum 120 months of railroad service required to qualify for an annuity under the Railroad Retirement Act. In a letter dated September 20, 2000, this initial decision was affirmed on reconsideration.

In a decision dated February 5, 2001, the hearings officer affirmed the initial decision. In his appeal to the Board, Mr. Heller reiterates the arguments that he made to the hearings officer. In that appeal, Mr. Heller contended that his former railroad employer has through discrimination, fraud, and corruption held Mr. heller out of service since his on the job injury in July 1976. The decision of the hearings officer fully and completely addresses these issues.

In his appeal to the Board, Mr. Heller also contends that he is entitled to a hearing on his appeal. However, in accord with section 260.5(g) of the Board's regulations (20 CFR 260.5(g)), where there is no issue of material fact, no oral hearing is required in this case.

APPENDIX - C

In his decision, the hearings officer states that Mr. Heller's last month of railroad service was March 1997. This is incorrect; the correct last month of service is March 1977. This was a typographical error and has no bearing on the outcome of this appeal.

For the reasons stated above decision the Board affirms and adopts the decision of the hearings officer.

The appeal is dismissed.

s/_____
Cherry T. Thomas

s/_____
V.M. Speakman, Jr.

s/_____
Jerome F. Kever

CONRAIL

May 19, 2000

Richard J. Heller
P.O. Box 5222
Phillipsburg, NJ 08865

Dear Mr. Heller:

This is in response to your letter requesting to be placed on a Railroad Retirement Disability Annuity.

Please be advised that a disability annuity must be applied for and granted by the Railroad Retirement Board, not by the employing railroad. Therefore, your application for a disability annuity must be made directly to the U.S. Railroad Retirement Board.

Yours Truly,

s/_____
Joann D. Jordan
Manager Human Resources

CONSOLIDATED RAIL CORPORATION 2001 MARKET STREET
P.O. BOX 41418 PHILADELPHIA, PA 19101-1418

APPENDIX - D

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 20, 2003

Mr. Richard J. Heller
PO Box 2638
Binghamton, NY 13902

Re: Richard J. Heller
v. Railroad Retirement Board
No. 03-384

Dear Mr. Heller:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

S/_____
William K. Suter, Clerk

APPENDIX E

No. 03-384

IN THE
Supreme Court of the United States

Richard J. Heller, Petitioner, v. U.S. Railroad Retirement Board, Respondent.	Petition for Rehearing for Writ of Certiorari: United States Court of Appeals for the Second Circuit

Certification of Counsel

This petition for rehearing is restricted to the grounds specified in U.S. Supreme Court Rule 44. Rehearing.

That it is presented in good faith and not for delay and I am Richard James Heller Petitioner (Pro Se) Counsel of Record, P.O. Box 2638 Binghamton, NY 13902 Phone (607) 863-4397

Dated: NOVEMBER 5, 2003

By _____
Richard James Heller
Petitioner (Pro Se)

Sworn to and
subscribed before
me this 5th day of November 2003

_____

CHERYL H. LALLI
Notary Public, State of New York
No. 01LA6094842
Qualified in Broome County
My commission expires 6/30/07

APPENDIX-F